

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WIZKIDS CREATIONS CO.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION No. 02-CV-4358
	:	
C.B.S. INC. and	:	
COLUMBIA BROADCASTING	:	
SERVICES, INC.,	:	
	:	
Defendants.	:	
	:	

**RESPONSE OF DEFENDANT
COLUMBIA BROADCASTING SERVICES, INC.
TO PLAINTIFF'S MOTION TO DISMISS**

Defendant Columbia Broadcasting Services, Inc. ("CBS") hereby responds to plaintiff's motion to dismiss and respectfully requests that the Court deny plaintiff's motion and grant defendant's pending motion to dismiss plaintiff's Complaint for the reasons set forth below and in its opening motion:

On September 24, 2002, CBS filed a motion to dismiss plaintiff's Complaint. The grounds for the motion were (1) that plaintiff had failed to adhere to the terms of two injunctions entered against him by Judges Bechtle and Yohn ("the Orders") requiring him to seek leave of court before filing another complaint based on the purported infringement of the copyrighted "Flying Carpet" or "People Mover"; and (2) that the Complaint failed to state a claim for

copyright infringement against defendants. Copies of the Orders are attached as exhibits to the memorandum of law accompanying CBS' Motion to Dismiss.

Instead of filing a response to the motion, plaintiff has filed a motion of his own "to dismiss defendants' motion to dismiss." In his motion, plaintiff alleges that the Orders have been "satisfied" and purports to quote from an order by Judge Dalzell in another case to lend credibility to this assertion. However, the Order by Judge Dalzell, attached hereto as Exhibit A, does nothing of the kind. It dismissed plaintiff's complaint against Judge Yohn as "frivolous":

"[A] complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact";

"[J]udges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly";

Because the Complaint (as far as we can decipher it) refers only to Judge Yohn's judicial actions, and thus Judge Yohn is immune from suit founded upon those actions, the Complaint has no arguable basis in law, and we therefore dismiss this action as frivolous under 28 U.S.C. § 1915(e)(2)

Hackney v. Yohn, No. 02-1820, April 15, 2002 (Dalzell, J.).

Plaintiff thus misrepresents Judge Dalzell's Order. Indeed, insofar as CBS is aware, the Orders are still in full effect. In fact, in another case brought by plaintiff and currently pending in this Court, Hackney v. SEPTA, No. 02-CV-03249 (assigned to Judge Hutton), SEPTA has moved to dismiss based in part on this Court's "standing order." See docket sheet, entry no. 7, attached hereto as Exhibit B.

Nothing else in plaintiff's motion, to the extent it is comprehensible, is responsive to CBS's pending motion to dismiss.

For all of the reasons set forth above and in CBS's motion to dismiss, CBS respectfully requests that the Court dismiss plaintiff's Complaint.

Dated: October 11, 2002

Respectfully submitted,

Gayle Chatilo Sproul
DECHERT PRICE & RHOADS
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103

Attorney for Defendant
Columbia Broadcasting Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this date caused a copy of the response of Defendant Columbia Broadcasting Services, Inc. to Plaintiff's Motion to Dismiss to be served by first-class mail upon the plaintiff pro se as follows:

WizKids Creations Co.
c/o Larry Hackney
5422 Chester Avenue
Philadelphia, PA 19143

Dated: October 11, 2002

Gayle Chatilo Sproul